

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1571 of 1988

with

CRIMINAL MISC.APPLICATION No 1617 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HARILAL PURSHOTTAM VYAS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1571 of 1988
MR BR SHAH for Petitioner No. 1-2
MR UA TRIVEDI for Petitioner No. 1-2
MR MA BUKHARI APP for Respondent No. 1
MR AMIT J SHAH for Respondent No. 2
 2. Criminal Misc.Application No. 1617 of 1988
PARTY-IN-PERSON for Petitioner No. 1
MR MA BUKHARI APP for Respondent No. 1
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Date of decision: 17/10/2002

ORAL JUDGEMENT

These petitions having arisen from the same order of the learned Special Judge, Ahmedabad, in Special Case No.1 of 1985, they were heard together and are disposed of by this common judgement. The petitioners in both the petitions are the accused persons in the original proceedings and their applications invoking Section 300 of the Criminal Procedure Code were, by an order dated 18.4.1988, rejected by the learned Special Judge. At one stage, during the admission hearing, the record and proceedings of Special Case No.1 of 1985 were called for and sent back by the order dated 9.4.1990 with a direction to the trial Court to proceed with the case at the earliest. However, on the next date of hearing, that is, on 19.4.1990 leave to amend and join the State Bank of India (original complainant) as respondent no.2 was granted, Rule was issued and interim relief staying the further proceedings of Special Case was granted. It appears from the record that, thereafter, the matters appeared for hearing straightway in the year 2000 and on 6.2.2002, by an order, passed in separate Misc. Criminal Applications filed by the CBI, which was prosecuting the petitioner in the trial Court, it was for the first time, made a party to the proceedings in this Court.

2 In Criminal Misc. Application No.1617 of 1988 learned counsel Mr Mangukiya appeared at the initial stage and, thereafter, in the year 1988 itself he was permitted to retire. None else has appeared thereafter for the petitioner in that petition. Both the petitions are drafted in the format of a criminal appeal stating the grounds to challenge the order passed below the petitioners' applications in the trial court and the mention of any particular provision for invoking the jurisdiction of this Court is conspicuously absent. It was still not very clear as to whether these applications were filed under Section 482 of the Criminal Procedure Code or under Articles 226/227 of the Constitution. It could not be gainsaid that the original impugned order of the Special Court could have been challenged in a revision. In short, the petitions were liable to be dismissed only on the ground of alternative remedy; and Misc. Criminal Application No.1617 of 1988 was also liable to be dismissed for want of prosecution. However, in view of the prolonged pendency of the matters, the

learned counsel Mr Trivedi appearing for the petitioners in Misc. Criminal Application No.1571 of 1988 was heard at length.

3 There was a limited consensus that, factually, the provisions of Section 300 of Criminal Procedure Code were invoked mainly on the ground that the allegations of conspiracy as defined in Section 120-A and punishable under Section 120-B of the Indian Penal Code were common in Special Case No.1 of 1985 pending before the special Court and in the earlier Special Case No.3 of 1983, which was disposed of and wherein the petitioners in Criminal Misc. Application No.1571 of 1988 were acquitted of all the charges. It was, however, also not in dispute that factually the earlier special case was in respect of the offences alleged to have been committed by the accused during the period from May 1978 to April 1979 and in that case the amount alleged to have been defalcated was restricted to around Rs.1.5 lacs; whereas in the subsequent case i.e. Special Case No.1 of 1985 one more accused was arrayed besides the petitioners and the transactions that took place subsequently during the period from November 1978 to July 1982 formed the basis of the allegations. It was seen that even as regards the offence punishable under Section 120-B of the Indian Penal Code there could be different evidence as regards the transactions taking place in the subsequent period. However, the learned counsel Mr Trivedi argued that petitioner no.2 i.e. Shri G.N. Vyas was not only acquitted in the earlier case but, no fresh material indicating his involvement in the alleged conspiracy was found in the charge-sheet related to the alleged offences in the subsequent period. Therefore, he insisted that the provisions of Section 300 of the Criminal Procedure Code would operate in favour of Mr G.N. Vyas, at least, as regards the alleged offence of conspiracy.

4 In these facts and circumstances it was conceded that these petitions may be disposed of without entering into the merits of other contentions and with the direction and clarification that, if, on the facts brought on record, the plea and protection of Section 300 were available to the petitioner no.2 i.e. Shri G.N. Vyas, the same may be argued before and considered by the trial Court in accordance with law after recording of evidence.

5. Unfortunately, the petitions filed by the petitioners who have been acquitted in the earlier case have served the purpose of delaying the trial against the other persons who are convicted in the earlier case and

against whom serious allegations appear to have been made in the subsequent Special Case No.1/1985 wherein the amount involved is exceeding Rs.3 crores.

6 In these facts and circumstances, the petitions are dismissed subject to the above clarification with a direction to the trial court to proceed with Special Case No.1 of 1985 as expeditiously as practicable. Rule is discharged with no order as to costs. If record and proceedings are retained in the office of this Court till now, the same shall be returned forthwith.

(D.H.Waghela, J.)
(mohd)